

# Law Office of Jack Silver

NOV 02 2016

P.O. Box 5469 Santa Rosa, California 95402  
Phone 707-528-8175 Fax 707-528-8675  
lhm28843@sbcglobal.net



***Via Certified Mail -  
Return Receipt Requested***

October 28, 2016

Susan Klassen, Director  
County of Sonoma  
Dept. of Transportation and Public Works  
2300 County Center Drive, Suite B-100  
Santa Rosa, CA 95403

Trish Pisenti, Operations Manager  
Central Disposal Site  
500 Mecham Road  
Petaluma, CA 94952

County of Sonoma Board of Supervisors  
575 Administration Drive, Room 100A  
Santa Rosa, CA 95403

Michael Caprio, Area President  
Keller Canyon Landfill Company  
901 Bailey Road  
Pittsburg, CA 94565

Donald W. Slager, President and CEO  
Republic Services, Inc.  
18500 N. Allied Way Suite 100  
Phoenix, AZ 85054

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)**

Dear Owners, Managers and Operators,

## **NOTICE OF ALLEGED VIOLATIONS**

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Federal Water Pollution Control Act or Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 et seq., which River Watch alleges are occurring as a result of landfill operations taking place at the Central Disposal Site at 500 Mecham Road in Petaluma. Notice is being sent to you as the responsible owners, operators, lessees, and/or managers of this facility and property. This Notice addresses violations of the Act including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Central Disposal Site landfill facility into Stemple Creek, which is impaired for sediment and nutrients under CWA § 303(d). Stemple Creek is tributary to the Estero de San Antonio, Bodega Bay, and the Pacific Ocean.

Comprehensive regulation of storm water and non-storm water discharges is essential to ensuring the environmental protection of our waterways – particularly when the discharge enters impaired waters such as those identified in this Notice. Storm water pollution from industrial sources conservatively accounts for more than half of the pollution impacting our local, state, and national surface waters, a central concern that prompted Congress to include storm water controls in the CWA. The Act prohibits storm water and non-storm water discharges without a permit pursuant to 33 U.S.C. § 1342, *see also* 40 C.F.R. § 122.26.

CWA § 301(a), 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p).

CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water and non-storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the United States Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board to issue NPDES permits including general NPDES permits in California.

The State Water Resources Control Board (“SWRCB”) elected to issue a statewide general permit for industrial storm water discharges, and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the “General Permit”) on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(P).

In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The General Permit contains certain absolute prohibitions. Discharge Prohibition Order Section A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water (“non-storm water discharges”), which are not otherwise regulated by a NPDES permit, to waters of the United States. Discharge Prohibition Order Section A(2) prohibits storm water discharges and authorized non-storm water discharges

that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation Order Section C(1) prohibits storm water discharges to any surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation Order Section C(2) prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan. In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a NOI. The General Permit requires existing dischargers to file NOIs before March 30, 1992.

Dischargers must also develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") which must comply with the standards of Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT"). The SWPPP must, among other requirements:

- Identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific Best Management Practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges [Permit Section A(2)]. BMPs must implement BAT and BCT [Permit Section B(3)].
- Include a description of individuals and their responsibilities for developing and implementing the SWPPP [Permit Section A(3)]; a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity [Permit Section A(4)]; a list of significant materials handled and stored at the site [Permit Section A(5)]; and, a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of sign spills and leaks, a list of all non-storm water discharges and the sources, and a description of locations where soil erosion may occur. [Permit Section A(6)].
- Include a narrative assessment of all industrial activities and potential pollutant sources at the facility [Permit Section A(7)]. Include a narrative description of the BMPs to be implemented at the facility for each potential pollutant and its source, and



consider both non-structural BMPs (including "Good Housekeeping") structural BMPs where non-structural BMPs are not effective [Permit Section A(8)].

- Conduct one comprehensive site compliance evaluation by the facility operator in each reporting period (July 1- June 30), with SWPPP revisions made, as appropriate, and implemented within 90 days of the evaluation [Permit Section A(9)].

The General Permit requires dischargers to eliminate all non-storm water discharges to storm water conveyance systems other than those specifically set forth in Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition D(1)(b).

As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report [Permit Section B(14)]. Dischargers must also collect and analyze storm water samples from at least two storms per year in compliance with the criteria set forth in Permit Section B(5). Dischargers must also conduct dry season visual observations to identify sources of non- storm water pollution in compliance with Permit Section B(7).

Permit Section B(14) of the General Permit requires dischargers to submit an "Annual Report" by July 1 of each year to the executive officer of the relevant Regional Water Quality Control Board. Permit Section A(9)(d) of the General Permit requires the dischargers to include in the annual report an evaluation of the dischargers' storm water controls, including certifying compliance with the General Permit. *See also* Permit Sections C(9), C(10) and B(14).

The EPA has established Parameter Benchmark Values ("EPA Benchmarks") as guidelines for determining whether a facility discharging storm water has implemented the requisite BAT and BCT. (65 Fed. Reg. 64746, 64767 (Oct. 30, 2000)). California Toxics Rule ("CTR") limitations are also applicable to all non-storm water and storm water discharges. (40 C.F.R. part 131).

The General Permit specifically incorporates the CTR and the Regional Water Quality Control Board, North Coast Region ("RWQCB") Water Quality Control Plan or "Basin Plan." The RWQCB has established applicable water quality standards. This Basin Plan includes a narrative toxicity standard and a narrative oil and grease standard. The Basin Plan

provides that "waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on constituents such as metals, solvents, pesticides and other hydrocarbons.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the Act, this Notice provides notice of the violations that have occurred, and continue to occur, at the Central Disposal Site landfill facility. Consequently, the Sonoma County Department of Transportation and Public Works, Sonoma County Board of Supervisors, Central Disposal Site, Keller Canyon Landfill Company and Republic Services, Inc., hereinafter referred to collectively as "the Discharger" is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, or Federal or State Order issued under the Act, as well as the failure to comply with requirements set forth in the Code of Federal Regulations.

The Act requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement, River Watch provides notice to the Discharger of ongoing violations of the General Permit relating to recycling and disposal services and operations taking place at the Central Disposal Site facility. Violations of the General Permit are violations of the Act, specifically CWA § 301(a).

Discharges from the Central Disposal Site, hereinafter referred to as the "Landfill," contain metals, volatile organic compounds, petroleum, toxins, sediment and nutrients which adversely impact the environment including Stemple Creek and its tributaries, the Estero de San Antonio, Bodega Bay, and the Pacific Ocean.

The Discharger filed a Notice of Intent ("NOI") with respect to the Landfill, agreeing to comply with the terms and conditions of the General Permit. The State Water Resources Control Board approved the NOI on April 21, 1992, and the Discharger was assigned Waste Discharger Identification ("WDID") number 149I006101. River Watch contends that in its operations of the Landfill, the Discharger has failed and is failing to comply with the terms and conditions of the General Permit requiring the preparation, implementation, review and

update of an adequate SWPPP, the elimination of all non-authorized storm water discharges and non-storm water discharges, and the development and implementation of an adequate monitoring and reporting program, specifically those requirements governing sampling and analysis, requiring the preparation and implementation of effective BMPs.

Compliance with the monitoring and reporting program and the requirement to implement effective BMPs is central to an efficacious General Permit program. The General Permit has required all non-exempt facilities to collect and accurately analyze samples from storm events, and implement effective BMPs detailed in the facility's SWPPP that are adequate in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges.

Information available to River Watch indicates the Discharger has not fully developed and/or adequately implemented a SWPPP for its operations at the Landfill as evidenced by the fact that the Discharger has failed to eliminate non-storm water discharges from operations on the Landfill and failed to reduce pollutants in storm water to below water quality objectives or standards. For example, aluminum, iron, and specific conductance, not naturally in rain water, are consistently detected in storm water discharges from the Landfill exceeding EPA benchmarks, indicating a failure to implement adequate BMPs. Copper has been detected in storm water discharges exceeding the CTR limit of  $9\mu\text{g/l}$  continuous/ $13\mu\text{g/l}$  maximum. The Discharger has been and will continue to be in violation of the Act every day it discharges unauthorized non-storm water and every day it discharges storm water containing pollutants as identified in this Notice without adequately implementing its SWPPP and the BMPs required to be incorporated in that SWPPP. Storm water on the Landfill site comes in contact with refuse and other industrial operations which cause it to be polluted by chemicals, metals, hospital waste, dead animals, etc. Some of these constituents are collected in sediment basins and are then discharged in violation of CTR limits and prohibitions contained in the General Permit.

A review of the Discharger's Annual Reports demonstrates discharges are occurring from the Landfill to Stemple Creek exceeding EPA benchmark and CTR limits. Copper and zinc have been detected repeatedly in discharges of storm water in quantities exceeding the CTR as well as the EPA benchmark. Sediment and nutrients are being discharged from the Landfill to Stemple Creek, which is CWA § 303(d) listed for both. Monitoring has also indicated storm water is contaminated by diesel and toluene.

River Watch alleges the recycling facility at the Landfill site is a source of heavy metals contamination in storm water discharges due to the failure to cover recycling bins during storm events. River Watch, in its extensive review of regulatory agency records regarding the Landfill, has not found any documentation of sampling conducted by the

Discharger or on its behalf to satisfy its responsibilities under the CWA as the operator of a site which discharges storm water related to industrial activities.

River Watch alleges that discharges from ponds on the Landfill site migrate via hydrologically-connected ground water to adjacent surface waters, including Stemple Creek and its tributaries. River Watch believes and hereby alleges that the Discharger has failed and is failing to eliminate the ongoing discharges from the Landfill of non-storm water and polluted storm water in exceedance of EPA Benchmarks and CTR limits.

The Discharger has self-reported the following exceedences of the CTR, EPA Benchmarks or other water quality control standards:

#### **2015-2016 Reporting Year prior To July 1, 2015**

Specific Conductance (umhos/cm)- 990, 1100, 600, 400

Chemical Oxygen Demand (mg/L)- 550

Aluminum (mg/L) - 4.8

Iron (mg/L) - 6.8

#### **2013-2014 Reporting Year**

Specific Conductance (umhos/cm) – 1,100; 1,000; 754; 719; 359

Chemical Oxygen Demand (mg/L) – 550; 170

Aluminum (mg/L) – 0.81; 4.9; 4.1; 1.7

Iron (mg/L) – 5.4; 3.4; 1.7

Zinc (mg/L) – 0.32; 0.19

#### **2012-2013 Reporting Year**

Specific Conductance (umhos/cm) – 990; 910; 760; 580; 540; 440

Chemical Oxygen Demand (mg/L) – 160

Aluminum (mg/L) – 1.9; 1.9

Iron (mg/L) – 2.4; 1.9; 1.2

#### **2011-2012 Reporting Year**

Specific Conductance (umhos/cm) – 990; 880; 670; 530; 440; 410

Total Suspended Solids (mg/L) – 410; 170

Aluminum (mg/L) – 6.2; 2.5; 2.3; 2.0

Iron (mg/L) – 7.2; 3.3; 1.9; 1.8



Zinc (mg/L) – 0.27

Chemical Oxygen Demand (mg/L) – 660

Additionally, petroleum hydrocarbons (diesel oil), were detected during reporting years 2013-2014 (0.14 mg/L), 2012-2013 (67 mg/L), and 2011-2012 (130 mg/L and 110 mg/L). Toluene, a volatile organic compound present in runoff from the Landfill, was reported during years 2012-2013 (0.80 mg/L), and 2015-2016 (20.7 mg/L). These detections, as well as consistently high aluminum, iron, and specific conductance raise significant concerns regarding the ability of the Discharger to control storm water, leachate generation, and groundwater protection at and surrounding the Landfill facility.

The General Permit in effect beginning July 1, 2015 (Order No. 2014-0057-DWQ), imposes new sampling and reporting requirements. Under Section XI.B. (“Sampling and Analysis”), the Discharger must collect and analyze storm water samples from two (2) qualifying storm events within the first half of each reporting year (July 1 to December 31), and from two (2) qualifying storm events within the second half of each reporting year (January 1 to June 30). The sampling and analytical results must be reported via SMARTs within thirty (30) days of obtaining the results.

River Watch believes and hereby alleges that the Discharger has failed and continues to fail to eliminate the ongoing discharges of polluted storm water in exceedance of EPA Benchmarks, and therefore is in ongoing violation of the terms of the new General Permit as evidenced by sampling results in the Discharger’s self monitoring reports for the following representative pollutants:

**2015-2016 Reporting Year Subsequent To July 1, 2015**

Specific Conductance (umhos/cm)- 540, 280, 260

Suspended Solids (mg/L)- 120, 110

Iron (mg/L)- 5.7, 1.5

Copper (ug/L) 37, 29, 24

The continuing discharge of unauthorized non-storm water pollutants identified above confirms the Discharger is violating General Permit Section X.C. (“SWPPP Performance Standards”). Under this section of the Permit, the “Discharger shall ensure a SWPPP is prepared to “...[i]dentify and describe the minimum BMPs [Best Management Practices] (Section X.H.1) and any advanced BMPs (Section X.H.2) implemented to reduce and prevent pollutants in industrial storm water discharges and authorized NSWDS. BMPs shall be selected to achieve compliance with this General Permit” (General Permit Section X.C.1.b.).



2. *The activity alleged to constitute a violation.*

The Landfill is located on approximately 398 acres in southern Sonoma County. Currently, the Landfill, owned by the County of Sonoma and operated by Keller Canyon Landfill Company, Inc., a subsidiary of Republic Services, Inc., receives most of Sonoma County's waste and sludge. The Landfill is permitted to accept up to 2,500 tons of refuse per day including, among other wastes, low-level contaminated soils, autoclaved medical waste, and de-watered sludge from sewer plants. A large portion of the Landfill is subject to rainfall events, and portions of the site have not been lined to protect groundwater. Storm water percolates in and around refuse and travels across areas of Landfill operations co-mingling with contaminants and refuse before it is collected in storm water sediment basins. Contaminated storm water is then discharged from basins in at least three (3) locations.

The Landfill is directly adjacent to tributaries of Stemple Creek which flows into the Estero de San Antonio, then to Bodega Bay and the Pacific Ocean – all waters of the United States. Stemple Creek and its tributaries are listed as impaired for sediment and nutrients under CWA § 303(d). Two unnamed tributaries of Stemple Creek also run through the Landfill site. The RWQCB has established applicable water quality standards in its Basin Plan including a narrative toxicity standard and a narrative oil and grease standard. The Basin Plan provides that, “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” Beneficial uses of Stemple Creek include non-contact water recreation; cold freshwater habitat; commercial and sport fishing; wildlife habitat; estuarine habitat; rare, threatened or endangered species spawning; reproduction and/or early development, and preservation of areas of special biological significance.

As discussed herein, River Watch alleges that activities and landfill operations on the Landfill site violate the General Permit as well as contaminate groundwater in violation of the prior and current General Permit. Groundwater often makes its way to the ground surface in seeps – highly contaminated water uncontrolled by the Discharger. Contaminated groundwater migrates down slope to the tributaries and main stem of Stemple Creek.

Streams in California are a major source of groundwater recharge. Despite having a leachate collection and removal system (“LCRS”) in place, leachate migration and contamination of groundwater has occurred at the Landfill. In addition to EPA benchmarks, Maximum Contamination Levels (“MCLs”) for drinking water are applicable. Sampling of groundwater wells has returned detections of pollutants in excess of state and federal MCLs, including those for benzene, toluene, 1,2,4- trimethylbenzene, 1,4-dichlorobenzene, and 4-isopropyltoluene.

The Landfill is located near agricultural operations including dairy and cattle ranches. Residences and domestic drinking water wells are down gradient such that leachate migration is contaminating drinking water. Existing and potential beneficial uses applicable to groundwater in the region of the Landfill include municipal and domestic water supply, reflecting the importance of groundwater as a source of drinking water as required by the Basin Plan (See Appendix 7).

On February 12, 2013, the Sonoma County Dept. of Transportation and Public Works was notified of many instances of discharges and threatened discharges of leachate and sediment into waters of the United States at the Landfill "from daily landfilling activities", in violation of its Waste Discharge Requirements Order. The following week, RWQCB staff inspected the Landfill and found numerous areas of waste discharge and water quality violations including inadequate erosion control and rainy season preparation efforts, visible leachate seeps, and inadequate containment of mixed waste materials – all in violation of the General Permit. Areas of concern related to erosion were found at various sites on landfill 1 and 2 during a December 15, 2014 inspection of the Landfill by the County of Sonoma. Erosion was also observed at the edge of the open Landfill area. On December 20, 2014, a leachate seep was identified on the south slope of landfill 1. The Discharger's 2013-2014 Annual Report filed with the RWQCB acknowledges materials entering the storm water runoff stream from the metals recycling area and household hazardous waste area.

River Watch alleges that Discharger has no individual NPDES permit allowing it to discharge pollutants from a point source within the Landfill to any waters of the United States. River Watch alleges that landfill operations and activities at the Landfill result in the discharge of industrial wastewater without a permit. The sampling results detailed above indicate that polluted storm water continues to be discharged from the Landfill to waters of the United States; and that the LCRS is unsuccessful in preventing releases of leachate generated by the Landfill to the ground water beneath the Landfill or offsite.

As discussed herein a review of the public record by River Watch reveals that the Discharger obtained coverage under the General Permit but fails to comply with its environmentally protective requirements, in particular the implementation of effective BMPs and illicit discharges of non-stormwater.

3. *The person or persons responsible for the alleged violation.*

The entities responsible for the alleged violations identified in this Notice are the County of Sonoma, as owner of the Landfill, the Keller Canyon Landfill Company, Inc., a subsidiary of Republic Services, Inc., as operator of the Landfill, and Republic Services, Inc., the operator of the Landfill as of April 1, 2015, as well as those employees of the Discharger

responsible for compliance with the General Permit.

4. *The location of the alleged violation.*

The location of the various violations of the CWA addressed in this Notice is the Landfill, 500 Mecham Road in Petaluma, California, including the waters of Stemple Creek, the Estero de San Antonio, Bodega Bay, and the Pacific Ocean – all waters of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from October 21, 2011 through November 1, 2016 including any and all violations that occur after October 21, 2016 until the final adjudication of this matter. Some of the violations are continuous in nature, and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

River Watch is an IRC § 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. The mailing address of River Watch is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface water and groundwaters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

Jack Silver, Esquire  
Law Offices of Jack Silver  
708 Gravenstein Highway North, #407  
Sebastopol, CA 95472  
Tel. 707-528-8175  
Email: [JsilverEnvironmental@gmail.com](mailto:JsilverEnvironmental@gmail.com)



## **VIOLATIONS**

River Watch contends that between October 21, 2011 and October 21, 2016, the Discharger violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants from the Landfill to waters of the United States without an individual NPDES permit, and in violation of the General Permit. Furthermore, River Watch contends these violations are continuing. The violations discussed herein are derived from records publicly available, or records in the possession and control of the Discharger.

Discharges from the Landfill site to adjacent tributaries of Stemple Creek occur both directly and indirectly. Direct and unpermitted discharges of polluted storm water occur to intermittent drainages and Stemple Creek via its tributaries. Drainages and pollutants move subsurface to the surface waters via tributary groundwater which is hydrologically connected to surface waters.

Since the beginning of operations, the Discharger has discharged storm water containing pollutants and non-storm water pollutants from the Landfill site into Stemple Creek and its tributaries, in violation of the General Permit, during at least every rain event over 1 inch as measured by the National Oceanographic and Atmospheric Administration. The Discharger will continue to be in violation of the General Permit each day it discharges non-storm water pollutants and contaminated storm water from the Landfill and from sludge operations taking place on the Landfill in violation of that Permit.

In addition to discharges from point sources within the Landfill, under the Clean Water Act the Landfill itself is a point source discharging via tributary ground waters to Stemple Creek. Due to the hydrological connection between the waste disposal site and waters of the United States, unpermitted non-storm water discharges occur every day in violation of the General Permit. This Notice alleges continuous violations occurring from October 21, 2011 through October 21, 2016.

Finally, River Watch also believes the Landfill is not operated to ensure that storm water and non-storm water discharges are properly contained, controlled, and/or monitored. As a result, the Discharger fails to follow the requirements of the General Permit in its sampling protocols by failing to accurately capture "first flush" samples and failing to properly sample from all the outfalls of the Landfill site.

## **REMEDIAL MEASURES REQUESTED**

River Watch avers that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the

biological impacts of its non-compliance upon public health and the environment surrounding the Landfill site:

- 1 Prohibition of the discharge of pollutants including, but not limited to, petroleum hydrocarbons, oil and grease, accumulated particulate matter, BOD, TSS, and heavy metals (including aluminum, iron, lead, copper and zinc) from the "recycling systems" operated at the Landfill site.
2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's Industrial Stormwater Fact Sheet Series, "Sector N: Scrap Recycling and Waste Recycling Facilities" (EPA Office of Water, EPA-833-F-06-029, December 2006));([www.epa.gov/npdes/pubs/sector\\_n\\_scraprecycling.pdf](http://www.epa.gov/npdes/pubs/sector_n_scraprecycling.pdf)).
3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit.
4. Sampling of storm water at least four (4) times per year over each of the next five (5) years: at "first flush"; the first significant rain after "first flush"; the first significant rain after April 1; and the second significant rain after April 1.
5. 100% of the discharge from the Landfill must be discharged through discrete conveyances.
6. Any discharge from the Landfill to a water of the United States must be sampled during the four (4) sampling events identified in paragraph #4 above.
7. Preparation and submittal to the RWQCB of a "Reasonable Potential Analysis" for the Landfill site and its operations.
8. Preparation of an updated SWPPP including a monitoring program, with a copy provided to River Watch.

## CONCLUSION

CWA § 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. § 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the

Act, 33 U.S.C. § 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the Stemple Creek watershed. Members of River Watch may use the watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the citizen suit provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a 60-day notice period to promote resolution of disputes. River Watch strongly encourages the Discharger contact River Watch within 20 days after receipt of this Notice Letter to initiate a discussion regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of the General Permit, River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger when the 60-day notice period ends.

Sincerely,

  
Jack Silver

JS:lhbm



*Service List*

Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Regional Administrator  
✓ U.S. Environmental Protection Agency Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

Republic Services of Sonoma County, Inc.  
Republic Services, Inc.  
c/o CT Corporation System  
818 West Seventh St. 2nd Floor  
Los Angeles, CA 90017

Keller Canyon Landfill Company  
c/o CT Corporation System  
818 West Seventh St. 2nd Floor  
Los Angeles, CA 90017

Verne Ball, Esq.  
Deputy County Counsel  
County of Sonoma Admn. Ctr.  
575 Administration Dr., Rm 105A  
Santa Rosa, CA 95403

Thomas M. Bruen, Esq.  
Law Office of Thomas M. Bruen  
1990 No. Calif. Blvd., Ste. 620  
Walnut Creek, CA 94596